

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL TILLMAN, et al.,)
Plaintiffs,)
)
v.) CIVIL ACTION NO.
) 04-40107-GAO
)
JOHNSON DIVSERSEY, INC.,)
Defendant.)

MEMORANDUM AND ORDER

For the reasons stated below, plaintiff John Paul Smith is ordered to submit either (1) his 1/3 portion of the filing fee (\$50.00) or an application to proceed without prepayment of fees, or this action will be dismissed as to him in 42 days from the date of this Order.

BACKGROUND

On June 7, 2004, plaintiff John Paul Smith, a prisoner at FMC Devens, filed a pro se complaint along with two other co-plaintiffs. Plaintiff Smith did not submit a filing fee, nor did he file an application to proceed without prepayment of fees.

ANALYSIS

A litigant filing a civil action in this court must either (1) pay the \$150 filing fee, or (2) file an application to proceed without prepayment of the filing fee. See 28 U.S.C. § 1914(a) (\$150 filing fee); 28 U.S.C. § 1915(a) (in

forma pauperis actions). In this case, plaintiff Smith has neither paid the filing fee, nor submitted a completed application to proceed without prepayment of the fee. Accordingly, I grant plaintiff Smith 42 (forty-two) days from the date of this Order to do one of the following: (1) submit his 1/3 portion (\$50.00) of the \$150.00 filing fee; or (2) file a completed application to proceed without prepayment of the fees. Failure to do so within the allotted time will result in the dismissal of this action as to plaintiff Smith without prejudice.

Plaintiff Smith is also advised that because he is a prisoner, he is subject to the additional restrictions of 28 U.S.C. § 1915. Along with an application to proceed without prepayment of fees, a prisoner litigant must also submit a "certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2).¹ Moreover, as a prisoner, plaintiff is hereby put on notice that even if he files an application to proceed without prepayment of fees, he will nevertheless have to pay the full amount of his portion of the filing fee. See

¹ This statement must be obtained from the "appropriate official of each prison at which the prisoner is or was confined." 28 U.S.C. § 1915(a)(2).

28 U.S.C. § 1915(b)(1)-(2) (prisoners filing civil actions are required to pay the full amount of the filing fee, even when proceeding in forma pauperis). Based on the information contained in plaintiff's application and any accompanying prison account statement, the Court will issue an order directing the appropriate prison official to withdraw an initial partial payment from plaintiff's account, followed by payments on a continuing monthly basis until his 1/3 portion (\$50.00) of the entire \$150.00 filing fee is paid in full.

See 28 U.S.C. § 1915(b)(1)-(2).

CONCLUSION

ACCORDINGLY, it is hereby ORDERED that plaintiff Smith is directed either to pay the \$150 filing fee or to file an application to proceed without prepayment of fees, within 42 (forty-two) days of the date of this Order, or this action will be dismissed without prejudice as to plaintiff Smith.

SO ORDERED.

Dated at Boston, Massachusetts, this 16th day of July, 2004.

s/ George A. O'Toole, Jr.
UNITED STATES DISTRICT JUDGE